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2 UNITED STATES DISTRICT COURT

3 EASTERN DISTRICT OF NEW YORK

4 x-----x

5 ARBEN MUSTAFA, Plaintiff,

6 Index No.
7 CV-00-4851

8 -against-

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10 HALKIN TOOL, LTD.,

11 Defendant.

12 x-----x

13 HALKIN TOOL, LTD.,

14 Third-Party Plaintiff,

15

16 -against-

17

18 ELIOU STEEL FABRICATION, INC.,

19 Third-Party Defendant.

20 x-----x

21 September 15, 2005
22 10:07 A.M.

23

24 EXAMINATION BEFORE TRIAL of NEAL A.

25 GROWNEY, taken by Defendant, held at the offices of
26 Rheingold, Valet, Rheingold, Shkolnik & McCartney,
27 LLP, 113 East 37th Street, New York, New York,
28 before Barbara E. Bierman, a Notary Public for and
29 within the State of New York.

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1 Neal A. Growney

2 protection goes out the windows, it's not there.

3 Q. So let me ask you about the proper
4 procedure where you have a situation involving a
5 control station that can be moved where the
6 selection was made to use the foot control, why the
7 operator would not be protected by simply having
8 the entire station moved a distance away from the
9 point of operation so that it would be impossible
10 for the operator to actuate the press while he was
11 anywhere near it?

12 A. Oh, I'm sorry, sorry. Now I
13 comprehend the scenario, the hypothetical scenario.

14 Q. I apologize.

15 A. In other words, you are telling me was
16 that if you move the operator station say three or
17 four feet away from the press so the operator goes
18 and he puts his piece into the press brake and then
19 he walks back and steps on it.

20 Q. Two or three feet, whatever the
21 distance is a safe distance.

22 A. That is not a realistic production
23 scenario. There would be virtually nobody who is
24 producing bent metal parts on a press brake would
25 do that unless there some compelling physical

1 Neal A. Grawney

2 reason in the piece. If you are doing small
3 pieces, you are going to have to be right next to
4 it.

9 A. My response is that falls into the
10 category, yes, anything could be done. It's not a
11 realistic scenario.

12 Q. And are you saying it's not a
13 realistic scenario because people just won't do it
14 in the workplace; is that based on your experience?

15 A. Yes, people producing production parts
16 will not do that.

17 Q. Since Mr. Mustafa did not have to have
18 his hands on the piece that he was working with at
19 that time of the accident, wouldn't it also have
20 been a selection made by the people who were in
21 control of this operator control station that he
22 should be using the two-hand control?

23 A. They have the alternative of using
24 foot control or two-hands control. There is
25 nothing that compels them to do two-hand control on

1 Neal A. Growney

2 similar back in Albania to here and that was
3 my objection.

4 Q. So now I will ask you when I use the
5 word similar, I am talking about moving parts and
6 the dangerous associated with having any part of
7 your body be close enough to a moving part of
8 machinery; is that not something that Mr. Mustafa
9 was aware of?

10 A. He was aware of dangers associated
11 with moving parts. And once again my understanding
12 is that was in the context of rotating cutters.

13 MR. SZPILZINGER: Off the record.

16 Q. Would you agree with me that if
17 Mr. Mustafa had followed the workplace rule and
18 removed his foot from the pedal after making the
19 bend that he made, that he would not have been
20 injured here?

21 MR. McCARTNEY: Objection to the form.

22 A. That most likely would have been the
23 case.

24 Q. Is a fixed barrier guard a type of
25 guard that can be used on any operation on a press

1 Neal A. Grownay

2 Q. What's the hazard?

3 A. The hazard is operating in a foot
4 pedal mode -- I'm sorry, one second. One second,
5 give me a little chance.

6 Q. Okay. I am only trying to help.
7 Finish your answer.

8 A. The hazard is having a part of your
9 body caught in the point of operation.

10 Q. So let me ask you now with that
11 definition, never place any part of your body
12 within the die area, would that not cover having
13 any part of your body in there to be injured?

14 A. No. Because that only covers
15 intentional placement of your body part in there.
16 It does not cover unintentional inadvertent
17 placement. That's what we are warning about when
18 you are operating in the foot pedal mode or that's
19 what you should be warning about.

20 Q. Is the appreciation provided by a
21 warning dependant on whether you do something
22 intentionally or accidentally?

23 A. Well, that's a little complicated
24 answer. By that, if you have the warning ahead of
25 time, well, then the people who have the authority

CERTIFICATE OF SERVICE

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

Troy Sockwell, being duly sworn, deposes and says:
deponent is not a party to the action, is over 18 years of age,
and resides in Jersey City, New Jersey.

On April 11, 2006, deponent served the within
Affidavit of Simcha D. Schonfeld upon the following individuals by depositing a true copy thereof in a post-paid wrapper, in an official depository under the exclusive care and custody of the U. S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

Jeremy D. Platek, Esq.
O'CONNOR, REDD, GOLLIHUE & SKLARIN LLP
Attorneys for Third-Party Defendant ELIOU
200 Mamaroneck Avenue
White Plains, New York 10601

and via Hand Delivery to:

Isaac Spzilzinger, Esq.
HERZFELD & RUBIN, P.C.
Attorneys for Defendant/Third-Party
Defendant HALKIN TOOL, INC.
40 Wall Street
New York, NY 10005

Troy Sockwell

Sworn to before me this
11th day of April, 2006

Marybeth Fennelly
NOTARY PUBLIC

MARYBETH FENNELLY
Notary Public, State of New York
No. 01FE6130244
Qualified in Queens County 09
Commission Expires July 11, 20